Las Vegas, NV

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAESARS ENTERTAINMENT d/b/a
RIO ALL-SUITES HOTEL AND CASINO

and Case 28–CA–060841

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL
16, LOCAL 159, AFL–CIO

ORDER DENYING MOTIONS

On January 9, 2020, the Communications Workers of America, AFL-CIO (CWA), which is not a party to this proceeding, filed a motion to intervene and for reconsideration of the Board's December 16, 2019 Decision and Order in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143. The Respondent and the General Counsel filed oppositions to the motion, the Charging Party stated its non-opposition, and CWA filed a reply. As discussed below, we deny the motion to intervene and dismiss the motion for reconsideration as moot.

CWA is the charging party in *Purple Communications*, 361 NLRB 1050 (2014) (supplemented at 365 NLRB No. 50 (2017)), which is pending before the United States Court of Appeals for the Ninth Circuit on petitions for review and a cross-petition for enforcement (see Case 27-CA-116673). On August 1, 2018, the Board issued a Notice and Invitation to File Briefs in *Rio All-Suites* regarding whether it should adhere to, modify, or overrule *Purple Communications*. Thereafter, on September 10, 2018, the Board filed a motion in the Ninth Circuit to stay oral argument and hold review in abeyance in *Purple Communications*, which the court granted. In its December 16,

2019 *Rio All-Suites* decision, the Board overruled *Purple Communications* and held that employees have no statutory right to use employer equipment, including information-technology resources, for Section 7 purposes. It then filed a motion in the Ninth Circuit to remand *Purple Communications* for further consideration consistent with *Rio All-Suites*, which CWA opposed and the Ninth Circuit has yet to rule on.[1]

In support of its motion to intervene, CWA argues that the *Rio All-Suites* Board violated its due process rights by overruling *Purple Communications* and effectively vacating that decision without prior notice. It further maintains that the Board must reconsider its decision because Member Emanuel should have recused himself due to his former affiliation with the law firm of Littler Mendelson.

We find no merit in CWA's arguments. The Board's Rules and Regulations do not provide for intervention at this late stage of the proceeding. See *Boeing Co.*, 366 NLRB No. 128, slip op. at 2 (2018). In any event, CWA's claim of prejudice is misguided. The Board provided CWA clear notice, through its Notice and Invitation to File Briefs in this case and its September 10, 2018 motion to stay oral argument in *Purple Communications*, that it would revisit *Purple Communications* in *Rio All-Suites*.

[1] See *Panhandle E. Pipe Line Co. v. FERC*, 890 F.2d 435, 438-439 (D.C. Cir. 1989) ("When an agency changes a policy or rule underlying a decision pending review, the agency should immediately inform the court and should either move on its own for a remand or explain how its decision can be sustained independently of the policy in question" (citation omitted).); see also *NLRB v. Food Store Emps. Union, Local 347*, 417 U.S. 1, 10 fn. 10 (1974) ("[A] court reviewing an agency decision following an intervening change of policy by the agency should remand to permit the agency to decide in the first instance whether giving the change retrospective effect will best effectuate the policies underlying the agency's governing act.").

CWA nonetheless opted not to file an amicus brief.[2] And by opposing the Board's motion in the Ninth Circuit to remand *Purple Communications*, CWA again sought to deny itself the opportunity in that case it instead seeks here to address that decision's continuing viability. In other words, nonparty CWA pursues the same failed strategy in this case that Painters Local 159 pursued when it sought to intervene in *Boeing*. See *Boeing Co.*, 366 NLRB No. 128, slip op. at 2-3. Finally, because we deny the request for intervention, the motion for reconsideration is moot.[3]

Dated, Washington, D.C., February 28, 2020

John F. Ring,	Chairman
Marvin E. Kaplan,	Member
William J. Emanuel,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] Regardless, there is no requirement that the Board issue a notice and invitation to file briefs before overruling precedent. See, e.g., *Boeing Co.*, 366 NLRB No. 128, slip op. at 2.

[3] We note that Member Emanuel addressed the Charging Party's request for his recusal in the underlying decision. See 368 NLRB No. 143, slip op. at 3 fn. 11. In addition, although the CWA asserts that Member Emanuel has participated in certain aspects of *Purple Communications,* he has not participated in those proceedings in any manner.